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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.B. et al., Persons
Coming Under the Juvenile
Court Law.

B295385
(Los Angeles County
Super. Ct. No. DK13202A-B)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

LUISA C.,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

Luisa C., in pro. per., for Objector and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Luisa C. (grandmother)¹ appeals from the dependency court's November 16, 2018 orders summarily denying her petitions under Welfare and Institutions Code section 388.² Grandmother's petitions sought orders placing the minors,

¹ Based on the record, it is unclear whether grandmother is the maternal grandmother of both minors, or the paternal grandmother of J.B. only (as the minors have different fathers). The subject orders identify her as the maternal grandmother. The record also includes a letter from mother to the juvenile court referring to grandmother as "my mother" and the grandmother of both minors. At argument on appeal, both parties indicated Luisa C. is the maternal grandmother. However, during the juvenile court hearing, counsel for the minors clarified that the petition was filed by a paternal grandmother. The record includes two letters to the court from the father of one of the minors (J.B.), as well as a document signed by that father purporting to give grandmother power of attorney to care for J.B. ; the father of J.B. and grandmother share the same surname.

² All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

J.B. and R.H., with her at her home. She contends on appeal the court abused its discretion when it denied the petitions without a hearing. We affirm.

FACTS AND PROCEDURAL HISTORY

The record on appeal includes only: grandmother's section 388 petitions; a transcript of, and exhibits admitted at the November 16, 2018 hearing where the juvenile court summarily denied the petitions; the court's orders; and the relevant appeal forms. The record does not include the petition filed at the beginning of the dependency case, and other hearing transcripts or orders, or any reports submitted by the Los Angeles County Department of Children and Family Services (Department). Our summary of the facts, therefore, draws from the limited record provided.

On November 8, 2018, grandmother filed two separate requests to change court orders under section 388; one request for each minor. Grandmother sought to change the court's prior court order to "[r]emove children from parents of child and placed in a foster care." (*Sic.*)

According to the statements made in grandmother's petitions, J.B. and R.H. have the same mother, but different fathers. J.B. and R.H.'s mother, and J.B.'s father were incarcerated, but the address for R.H.'s father was unknown. Describing the change in circumstances since the entry of the previous order, grandmother stated in each petition: "I visit permanently my granddaughter and she cries and

wants to be with me. I decided to bring her to my house and raise her if court allows me. I am a dedicated person. I have two houses and also time to provide care and love to my granddaughter. I know her since was born and always love her and helped in raising her. Her mother and father are in jail and I am sure I can take care of her as of her sister and provide for them.” (*Sic.*) Describing the relief requested, she said, “I would like to have an order to place her to live with me in my house and stay with me until they are adults.” (*Sic.*) She stated the requested order would be in the minors’ best interests because: “I am her grandmother and she loves me very much as I do. She will have a place to live and care and also family as me taking care of her. She will grow in a safe environment with love and care. Overall I have time since I have income from property rent and I can easily spend as much time needed to develop successfully. I’ll provide with accommodations, school, transportation, baby sitting if needed, but mostly I will provide as a grandmother love and affection to her. My record is 100% clean and never have any problems with law.” (*Sic.*)

The petitions included various exhibits. Grandmother submitted a personal affidavit, which stated, “I Luisa [C.] declare under penalty of perjury that I have not had any problem with the law and never committed any felony or misdemeanor, I have no problems with any addiction and I am a very healthy person physically and morally.” Her affidavit also stated that she has two properties, a car, and is “able to provide school, food, transportation, baby sitter and

everything else for development of my granddaughters.” The additional exhibits included a lease agreement that indicated grandmother was the landlord of a certain property and received \$2,000/month in rent, pictures of a property, a \$2,000 receipt, a letter from mother requesting that her children be placed with grandmother, and multiple reference letters.

The November 16, 2018 hearing was scheduled as a section 366.26 selection and implementation hearing. The minors’ caregivers were present. At the outset of the hearing, the court noted that grandmother’s section 388 petitions had also been filed. However, the court had not yet received copies of the petitions. Thus, the court decided to trail the hearing until the afternoon session, in order to allow time for the court to review the petitions.

A letter by J.B. was filed with the court on the day of the hearing, which read: “Dear Grandma thank you for taking care of me and watching over me but, when you would tell me things that I did not need to know it was not right. Also when you asked me to be a little more older that was a lot to ask but when you said a little bit you meant a lot you might not notice that. But, even if you’re mad at me I know that in your heart you still love [R.H.] and me.” (*Sic.*)

During the afternoon session, the court announced that it was “denying the 388 summarily.” The court explained: “I did review [the section 388 petitions] and I noted [grandmother] was previously assessed some three years ago. And it was denied on the basis of a need for a criminal

waiver, which I don't think was ever obtained. I don't know where that went after that. So there has been an assessment of that relative, which was denied. And there does not appear to be a change of circumstances regarding her. [¶] And secondly, I do agree with the comment that there does not appear to be a basis to find that this would be in the best interest of the child. As I understand, she doesn't want to go with the grandmother, as well. So I am denying that summarily on that basis."

Mother's counsel requested that the court set the section 388 petitions for a hearing and argued that it "has been quite a long time since the initial assessment of the grandmother." Father's counsel joined in the argument of mother's counsel and noted that "there was a 2013 referral to the Department that was found to be unfounded, which I think further supports the notion that the grandmother is appropriate to be able to take the children." The Court responded, "Well, the assessment was done in 2015. September of 2015. That, obviously, was taken into consideration, . . . and it was denied at that time. And there is no change in circumstances."

The minor's counsel noted that the case was "on the eve" of a section 366.26 hearing, that minors deserved "permanence and stability," and further proceedings on the section 388 petitions would hinder progress towards those goals. Minor's counsel argued the best interests prong was not met.

The court denied both of grandmother's section 388 petitions without a hearing, finding that "the request does not state new evidence or a change of circumstances," and "the proposed change of order . . . does not promote the best interests of the child."

Grandmother filed a timely notice of appeal.

DISCUSSION

Grandmother contends the lower court abused its discretion in denying without a hearing her section 388 petitions to change the court's placement order and place the minors with her. We find no abuse of discretion.

We review the dependency court's decision to deny a section 388 petition without a hearing for abuse of discretion. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1158.) The court abuses its discretion when a decision is arbitrary, capricious, patently absurd, or exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319 (*Stephanie M.*).

"Any . . . person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made" (§ 388, subd. (a)(1).) To prevail on a section 388 petition, the moving party must establish by a

preponderance of the evidence that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

Although a section 388 petition should be liberally construed in favor of granting a hearing to consider the request, a hearing is only required if the moving party makes a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child. (See *In re Edward H.* (1996) 43 Cal.App.4th 584, 592–593.) “The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The juvenile court may consider the entire factual and procedural history of the case in deciding whether to grant a hearing on a petition under section 388. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) The asserted change in circumstances “must be of such significant nature that it requires a setting aside or modification of the challenged order.” (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.) While a petition for a change of placement can be brought at any time pursuant to section 388, when such a motion is brought late in the dependency proceedings, “a primary consideration” in assessing the best interests of the child “is the goal of assuring stability and continuity.” (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 317–319 [juvenile court properly “plac[ed] special weight on the child’s need for stability” in

denying section 388 request to place child with grandmother instead of in foster care, when motion heard at time of setting and implementation of a permanent plan under section 366.26].)

In grandmother's petitions, she asserted that when she visits the minors they cry and want to be with her, she decided to bring the minors to her house and raise them, she has two houses, she has time to provide care and love to the minors, she has known the minors since they were born, she has always loved the minors and has helped in raising them, the parents are in jail, and she is sure that she can take care of the minors and provide for them.

Grandmother's petitions do not make a prima facie case of changed circumstances because they offered no details about how these circumstances are in any way different from those that existed at the time of the court's prior order placing the minors in foster care. Further, the record on appeal does not contain the original order placing the minors in foster care or the Department report that might describe the reasons why the minors were not placed with grandmother three years earlier. Without a report describing whether grandmother was previously considered as a placement option or the facts that led the court to place the minors in foster care, it is difficult to determine whether grandmother adequately alleged changed circumstances. However, upon review of the limited record available to us, the juvenile court's determination that grandmother had not

adequately alleged changed circumstances was not an abuse of discretion.

Even assuming there was an adequate showing of changed circumstances, grandmother's petitions do not make a prima facie case that the requested change in placement would be in the minors' best interests.

In grandmother's petitions, she asserted that the minors love her and she loves them, the minors will have a place to live and a family to take care of them, they will grow up in a safe environment with love and care, grandmother has time and income to adequately care for them, she will provide the minors with accommodations, school, transportation, and babysitting, and grandmother has no criminal record.

Given that this was at the time of a section 366.26 hearing, and with the apparent participation of the minors' caregivers in these proceedings, the court did not abuse its discretion in finding that placement with grandmother would not be in the minors' best interests. At the hearing, the Department's attorney argued that the court "is being asked to delay permanency" for the minors. The minors' attorney agreed, specifically noting that the section 388 petition had been brought late in the proceedings and that "the best interests statements don't address the issues of destabilizing permanency." The court also noted the stage of the proceedings, commenting on the three-year passage of time since grandmother was first considered, emphasizing one child's expressed desire not to be placed with

grandmother, and concluded that “there does not appear to be a basis to find that this would be in the best interest of the child.” Ultimately, grandmother has not identified any evidence that she could offer at a hearing to demonstrate otherwise.

Because grandmother’s section 388 petitions did not make out a prima facie case of changed circumstances or that a change in placement would be in the minors’ best interests, the court did not abuse its discretion in denying the section 388 petitions without a hearing.

DISPOSITION

The orders denying grandmother Luisa C.’s petitions under section 388 are affirmed.

MOOR, J.

We concur:

BAKER, Acting P. J.

KIM, J.